IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 334/2005

RADHEY SHYAM VS. STATE OF RAJASTHAN

Date of order: 02.04.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. A.K. Gupta for the accused-petitioner.
Mr. B.S. Chhaba, Public Prosecutor for the State.

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R E P O R T A B L E

The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioner against the order dated 06.04.2005 passed by the Sessions Judge, Sawai Madhopur in Sessions Case No. 12/2005 framing charge against the accused-petitioner for the offence under Section 306 IPC.

In brief the facts of the case are that Ravindra Kumar lodged a report on 16.12.2003 at Police Station Kotwali, Sawai Madhopur narrating the incident. After investigation the police submitted Challan against the accused-petitioner. The trial Court considering the written suicide note of deceased Moolchand, FIR and the complaint, framed charge against the accused-petitioner for the offence under Section 306 IPC, which has been challenged by the accused-

petitioner on the ground that the trial Court has not properly considered the ingredients of Section 306 IPC.

Learned counsel Mr. Gupta, appearing on behalf of the accused-petitioner referred Section 306 IPC, which reads as under:-

> **306. Abetment of suicide.-** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mr. Gupta further submits that there must be some evidence to show that the accused abetted the commission of offence and the abetment has been described under Section 107 IPC, which reads as under:-

> **107. Abetment of a thing.-** A person abets the doing of a thing, who-
>
> First- Instigates any person to do that thing; or
>
> Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

After referring Sections 306 and 107 IPC, learned counsel Mr. Gupta further contended that no

ingredient is found with regard to commission of offence under Section 306 IPC by the petitioner and thus, the charge which has been framed against the accused-petitioner under Section 306 IPC is contrary to the provisions of law and the trial Court has seriously erred in framing the charge against the accused-petitioner for the offence under Section 306 IPC.

It is further contended that the accused-petitioner used to borrow money from the deceased Moolchand who was working in LIC posted at Karauli. The accused-petitioner used to go from Sawai Madhopur to Karauli for borrowing money. Further 2-1/2 months prior to committing suicide by the deceased, the deceased started living at Sawai Madhopur and he was not attended his office at Karauli. There is not material available on record that during this period of 2-1/2 months, the accused-petitioner met with the deceased at any point of time and in these circumstances, no charge can be framed against the accused-petitioner for the offence under Section 306 IPC.

In support of his submissions, Mr. Gupta placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh, reported in 2002 SCC (Cri) 1088,** wherein the Hon'ble Supreme Court has held that there must be a reasonable certainty to incite the consequence- Having

regard to the dying declaration and suicide note of the deceased along with all other circumstances of the case, offence under Section 306 not made out.

He further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Swamy Prahaladdas Vs. State of M.P. & Anr., reported in 1999 Cr.L.R. (SC) 141,** to show that merely because any allegation alleged in the suicidal note, the petitioner cannot held responsible for abetment as in the aforementioned case of **Swamy Prahaladdas (supra)** during quarrel appellant remarked the deceased 'to go & die' and the deceased committed suicide at his home- Words are casual in nature which are often employed in the heat of the moment- Suicide was the direct result of the words uttered is not acceptable and there was no mens rea reflect from the act.

He further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh, reported in 2002 Cri.L.J. 2796,** wherein also the accused telling deceased 'to go and die'- That itself would not constitute ingredient of 'instigation'- Presence of mens rea is necessary concomitant of instigation.

Learned counsel for the petitioner further placed reliance on the judgment rendered by the Madhya

Pradesh High Court in the case of **Ajay Patodia Vs. State of Madhya Pradesh, reported in 2004 Cri.L.J. 197,** wherein the High Court of Madhya Pradesh has observed that no allegation in complaint to suggest that petitioner had a knowledge or intention to effect that deceased would commit suicide.

The same view is expressed by this Court in the case of **Rameshwar Dayal Vs. State of Rajasthan, reported in 1999(2) R.C.C. 1064** and in the case of **Heera & 5 Ors. Vs. State of Rajasthan, reproted in 2000 WLC(Raj.) UC 414.**

Further on the point of mens rea, Mr. Gupta placed reliance on the judgments rendered by the Hon,ble Supreme Court in the cases of **Chanchal Kumaria and others Vs. Union Territory Chandigarh, reported in AIR 1986 SC 752, Shri Ram Vs. The State of U.P., reported in AIR 1975 SC 175, Trilok Chand Jain Vs. State of Delhi, reported in AIR 1977 SC 666** and further the judgment of this Court rendered in the case of **Damodar Sharma Vs. State of Rajasthan, reported in 2006(2) RLW 1588.**

I have heard learned counsel for the accused-petitioner, learned Public Prosecutor for the State and have also gone through the impugned order dated 06.04.2005 by which charge has been framed against the accused-petitioner for the offence under Section 306

IPC and carefully perused the record of the case, relevant provisions of law and the judgments rendered by the Hon'ble Supreme Court, Madhya Pradesh High Court and this Court referred before me.

As per Section 306 IPC, If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Now it is to be determined whether the accused-petitioner has committed any commission of act of abetment resulting which the deceased Moolchand committed suicide.

As per Section 107 IPC, the word 'abetment' is defined. First ingredient of abetment is instigation to commit suicide; secondly if any person conspire for doing of abetting to instigate to commit suicide and if suicide is committed in pursuance of that conspiracy and thirdly intentionally aids, by any act or illegal omission, the doing of that thing.

All these three ingredients are necessary for abetment. In the instant case, to determine this aspect whether the allegations of abetment levelled against the petitioner under Section 306 IPC are made out or not?, the most important document is suicide note of deceased Moolchand. In the suicide note Ex.P5, deceased Moolchand has categorically stated that Radhey Shyam

Khatik is responsible for his death and on the same day after writing the said suicide note levelling allegations against the petitioner Radhey Shyam, Moolchand committed suicide.

As the petitioner himself admits that he used to borrow money from the deceased, therefore, there must be some dispute arising out of the money transaction and thus, mens rea is there for abetment and harassing the deceased and the harassment was intentional and the petitioner instigates and conspired to commit suicide which clearly reveals from the said suicide note of deceased Moolchand.

Now with regard to ratio decided by the Hon'ble Supreme Court in the case of **Ramesh Kumar (supra),** referred by the learned counsel for the accused-petitioner, in the aforementioned case Hon'ble the Supreme Court has clearly defined and observed “Instigation”- Meaning- There must be a reasonable certainty to incite the consequence- Having regard to the dying declaration and suicide note of the deceased along with all other circumstances of the case, offence under Section 306 not made out.

Here in the instant case, there is reasonable certainty to incite the consequence with regard to the suicide note of deceased Moolchand. Thus, the offence under Section 306 IPC is made out against the accused-

petitioner. Therefore, the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Ramesh Kumar (supra)** is not applicable to the instant case.

Similarly as held by the Hon'ble Supreme Court in the case of **Sanju alias Sanjay Singh Sengar (supra),** quarrel between the accused and deceased- Accused telling deceased 'to go and die'- That itself would not constitute ingredient of 'instigation'- Presence of mens rea is necessary concomitant of instigation- Fact that deceased committed suicide after two days of quarrel during which said words were uttered by accused.

Here in the instant case, on the same day after writing the suicide note the deceased Moolchand committed suicide specifically mentioning the name of the petitioner Radhey Shyam in the said suicide note. Therefore, the ratio decided by the Hon'ble Supremme Court in the aforementioned case of **Sanju alias Sanjay Singh Sengar (supra)** is also not applicable to the instant case.

Similarly in the case of **Chanchal Kumaria and others (supra),** decided by the Hon'ble Supreme Court, it has been observed that no dependable evidence in regard to actual abetment by any of the accused and the accused entitled to be acquitted, but in the present case specific allegations are levelled against the

acused-petitioner, therefore, the ratio decided by the Hon'ble Supreme in the aforementioned is also not applicable to the instant case.

The rest of the judgments which are referred by the learned counsel for the accused-petitioner with regard to mens rea, as already discussed herein above, as admitted by the petitioner himself that money transactions were there between the petitioner and the deceased Moolchand and the petitioner was borrowing money from the deceased, therefore, presence of mens rea is also there, therefore, the judgments referred are also not applicable to the instant case.

Thus, after considering the relevant provisions of law, the judgments referred before me and the impugned order dated 06.04.2005 and upon careful perusal of the relevant record, I find no illegality or error in the impugned order dated 06.04.2005 passed by the Sessions Judge, Sawai Madhopur and no interference whatsoever is required by this Court.

Consequently, the revision petition fails and the same is hereby dismissed.

Record be sent back forthwith.

(K.S. RATHORE),J.

/KKC/